REMARKS

This is a full and timely response to the final Office Action mailed November 18, 2009. Applicants appreciate the withdrawal of the 35 U.S.C. 112 rejection. Reexamination and reconsideration in view of the following remarks is respectfully solicited.

Claims 35-40 remain pending in this application, with claims 35 and 38 being the independent claims. Claims 1-34 were previously canceled. No claims have been amended herein, and no new matter is believed to have been added. The remarks are believed to be fully responsive to the Final Office Action mailed November 18, 2009 and to render the claims at issue patentably distinct over the cited references and in condition for allowance.

Rejection Under 35 U.S.C. 103(a)

Claims were again rejected under 35 U.S.C. 103 as allegedly being unpatentable over FR 2471775, published June 26, 1981 to assignee, L'Oreal (hereinafter "FR 2471775A") in view of U.S. Patent No. 6,280,746 issued on August 28, 2001 to Arquette et al. (hereinafter "Arquette"). This rejection is respectfully traversed.

Independent claim 35 is directed to a method of providing a composition for topical application, wherein said composition increases substantivity and neutralizes an acid gelling agent. The method comprises the step of neutralizing the gelling agent with an effective amount of said composition. The composition comprises polar hydrophilic salts and non-polar unsaponifiables. The polar hydrophilic salts and non-polar unsaponifiables comprise the products of hydrolysis of a lipid comprising jojoba oil, wherein said lipid comprises at least 6 weight percent long carbon chain unsaponifiable material prior to hydrolysis.

Independent claim 38 is directed to a method of providing a composition for topical application, wherein said composition increases substantivity and neutralizes an acid gelling agent. The method comprises the step of neutralizing the gelling agent with an effective amount

of said composition. The composition comprises polar hydrophilic salts and non-polar unsaponifiables, wherein said polar hydrophilic salts and said non-polar unsaponifiables comprise the products of hydrolysis of a lipid comprising jojoba oil. The lipid comprises at least 6 weight percent long carbon chain unsaponifiable material prior to hydrolysis, said long carbon chain unsaponifiable material comprising at least 18 carbons in length.

A FINAL REJECTION HERE IS IMPROPER

MPEP 706.02(l)(3) provides that: "When applying any references that qualify as prior art under 35 U.S.C. 102(e) in a rejection under 35 U.S.C. 103 against the claims, the examiner should anticipate that the reference may be disqualified under 35 U.S.C. 103(c)...If a statement of common ownership or assignment is filed in reply to the 35 U.S.C. 103 rejection based on prior art under 35 U.S.C. 102(e) and the claims are not amended, the examiner may not make the next Office action final if a new rejection is made. ...

In the previous Office Action mailed April 24, 2009, the Examiner indicated that Arquette "constitutes prior art only under 35 U.S.C 102(e)" and suggested overcoming of the 35 U.S.C. 103(a) rejection by, among other suggestions, showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). In response thereto, Applicants provided the suggested 35 U.S.C. 103(c) statement.

In the present Final Rejection, the Examiner copied the rejection verbatim from the April 24, 2009 Office Action, and again repeated that Arquette "constitutes prior art only under 35 U.S.C 102(e)" and once again, suggested a 35 U.S.C. 103(c) showing. However, in the section entitled "Response to Arguments", the Examiner asserts for the first time that Arquette has a 35 U.S.C. 102(b) date, and not a 35 U.S.C. 102(e) date, and cannot be overcome by a 35

U.S.C. 103(c) statement. The Examiner now alleges that the instant claims allegedly do not qualify for the parent priority date of January 3, 2000 (priority claim based on U.S. Patent No. 7,435,424). Applicants submit that this is a new rejection, making this final Office action improper under MPEP 706.02(l)(3) ("[T]he examiner may not make the next Office action final if a new rejection is made"). In view of the foregoing, the present Office action should have been designated as non-final so that Applicants have a chance to respond to a properly formulated rejection as a matter of right and may be afforded due process to respond.

THE CLAIMS ARE PATENTABLY DISTINGUISHABLE FROM THE REFERENCES RELIED UPON IN THE 35 USC 103 REJECTION

In addition, while not conceding that the instant claims qualify only for a priority date of June 30, 2003, the filing date of the present application, as asserted by the Examiner, Applicants submit that their claims are patentably distinguishable from FR 2471775 in view of Arquette. The Examiner concedes that FR '775 does not explicitly teach hydrolysis of the oil, but relies upon Arquette to supply that deficiency. At p. 5 of the final Office action, it is asserted that: "The reference disclosed that jojoba esters are catalyzed, i.e., hydrolyzed, using alkali metal hydroxide, as applicants had done (col. 3, lines 53-60). The reference disclosed gel (example 2). The Floraester disclosed by the reference are expected to have polar hydrophilic salt and non-polar unsaponifiable fractions of jojoba oil, and expected to comprise more than 10% long chain carbon material prior to hydrolysis. Hydrolyzed jojoba esters are produced using potassium hydroxide, and therefore they are alkaline and expected to be capable to neutralize acidic gelling agent."

Arquette does not describe hydrolysis of jojoba oil wax esters as claimed by Applicants. Arquette instead describes a trans-esterification (not saponification) reaction between jojoba oil

and an alcohol. Trans-esterification is the general term used to describe the class of organic reactions where an ester is transformed into another through interchange or reassembly of the alkoxy moiety. When the original wax ester is reacted with an alcohol (as in Arquette), the trans-esterification process is termed "alcoholysis" as represented by the following:

RCOOR' + R''OH ↔ RCOOR'' + R'OH

While both hydrolysis and trans-esterification (*i.e.*, alcoholysis) reactions may be base-catalyzed, these reactions yield entirely different products. More specifically, hydrolysis of the ester forms soaps, which eliminates the possibility of reassembly of the ester linkage to generate a randomized, inter-esterified wax ester, as in the trans-esterification reaction (*i.e.*, "alcoholysis"). Accordingly, it will be appreciated that the saponification products of the instant invention may not be obtained via trans-esterification. Therefore, Arquette fails to provide the above-noted deficiency of FR 2471775 with respect to the independent claims.

In addition, contrary to the Examiner's assertion, Arquette teaches away from use of the alkaline catalyst to neutralize an acidic gelling agent. Arquette provides that "any remaining catalyst can be neutralized and deactivated by the addition of citric acid" (Col. 5, lines 25-27). Thus, rather than serving as a neutralizer, the alkaline catalyst is itself neutralized. The alkaline catalyst is neutralized by the addition of citric acid, not the acidic gelling agent. Moreover, at Col. 12, lines 6-7, Arquette provides that a "pH adjustment to between about 6.8-7.2 was useful", i.e., that there has to be an adjustment to neutralization, rather than neutralization occurring from the alkaline catalyst.

Therefore, Applicants' independent claims 35 and 38 are patentably distinguishable from FR 2471775 in combination with Arquette, and reconsideration and withdrawal of the 35 U.S.C. 103 rejection is requested. Claims 36-37 and 39-40 depend from these independent

claims and therefore also are not obvious. The 35 U.S.C. 103 rejection of claims 35-40 should therefore be withdrawn.

CONCLUSION

Based on the foregoing, independent claims 35 and 38 are patentable over the citations of record. The dependent claims are also deemed patentable for the reasons given above with respect to the independent claims. Hence, Applicants respectfully submit that the present application is in condition for allowance, and such allowance is therefore earnestly requested. Moreover, entry and consideration of this response are proper under 37 CFR 1.116 for at least the following reasons. The response overcomes all of the rejections set forth in the above-noted Office Action. The response does not raise new issues requiring further search. Additionally, the present response places the application in better form for appeal, which Applicants fully intend to pursue, if necessary.

Should the Examiner have any questions or wish to further discuss this application, Applicants request that the Examiner contact the Applicants' attorneys at the below-listed telephone number.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent abandonment on this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,
INGRASSIA FISHER & LORENZ, P.C.

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